IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 25677 of 2007(F)

PETITIONER:

R.HARIHARAN PILLAI,
SELECTION GRADE LECTURER, (UNDER SUSPENSION),
DEPARTMENT OF POLITICAL SCIENCE,
SREE KERALA VARMA COLLEGE,
THRISSUR.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENTS:

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1. PRINCIPAL, SREE KERALA VARMA COLLEGE,
THRISSUR.

2. COCHIN DEVASWOM BOARD,
REP.BY ITS PRESIDENT.

BY STANDING COUNSEL, SRI K.GOPALAKRISHNA KURUP FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C) No. 25677 of 2007-F

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Dated this the 24th day of August, 2007

J U D G M E N T

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Ext.P4, an order placing the petitioner under suspension pending enquiry on counts of indiscipline, is under challenge.

2. The petitioner's complaint is that Ext.P4 is the result of victimisation arising out of the animosity that the management has towards him owing to a series of litigations, the last among which has culminated in the judgment issued by this Court on 17th July, 2007, in W.P.(C) No.20465/2007. It was also argued by the learned counsel for the writ petitioner that the impugned action of issuance of Ext.P4 is in excess of authority under Sub-section (2) of Section 60 of the Calicut University Act, 1975, hereinafter referred to as the “Act”, read in the context of Statute 71(2) of the Calicut University (Conditions of Service of teachers and members of Non-teaching Staff) First Statutes, 1979, hereinafter referred to as the “Statutes”.

3. The question of victimisation, bias, etc. would be relevant for consideration only when this Court is required to sit in judgment on the procedure adopted in the disciplinary proceedings and any resultant order of penalty. At times, the initiation of disciplinary proceedings may itself be founded on victimisation. But the mere filing of litigations and placing allegations against one another does not, by itself, give rise to a definite ground, on the facts of this case, to hold conclusively that this is the result of the victimisation, at least, prima facie. I hasten to add that I am not concluding that issue against the petitioner because the disciplinary proceedings which could be triggered by Ext.P4 is still in the offing.

4. Section 60(2) of the Act provides that no teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him. Statute 71(2) of the Statutes provides the procedure for imposing major penalties. That provision enjoys that the person who is being proceeded on counts of indiscipline, for imposition of major penalties, has to be given a show cause notice after framing definite charge or charges, on the basis of a complaint that is received, or on

consideration of the report of an investigation, or for other reasons. The stage of formulation of the charge or charges and the tentative decision of the management to impose a major penalty, calling for the requirement to follow Statute 71(1) of the Statutes would arise only after a deeper consideration of the complaint, investigation report or other reasons which may be required to be adverted to and considered to issue a show cause notice after framing of charge or charges, in terms of Statute 71(1) of the Statutes. But the initiation of proceedings contemplated by Section 60(2) of the Act takes within its sweep a larger area of consideration which commences much earlier than the exercise of formulating the charges in terms of Statute 71(1) of the Statutes. The point of initiation of disciplinary proceedings and the scope of such proceedings in terms of Section 60(2) of the Act, is not the same as the situs of commencement of the procedure in terms of Statute 71(2) of the Statutes. The sweep of Section 60(2) of the Act is wider in import than the dictate of Statute 71 of the Statutes and has to be understood to include the power to issue an order of suspension, even before framing charges and issuing a show cause notice on specified charges. There is nothing wrong in placing a person under

suspension if on the materials on record, the disciplinary authority is satisfied that he has to be so placed pending finalisation of initiation of disciplinary proceedings. There is no lack of jurisdiction to do so.

5. There is no such jurisdictional error or legal infirmity in the impugned action, particularly because, even a reading of Ext.P4 would show that it has been issued as a forerunner to the disciplinary proceedings for which Professor G.Gopalakrishnan has been appointed to conduct the enquiry. May be that the memo of charges is yet to be issued to the delinquent. Because the Devaswom Board has already appointed Professor Gopalakrishnan to look into the different aspects of the two colleges under its management, the Board would have felt it appropriate to appoint him as the Enquiry Officer. Though such a decision choosing the Enquiry Officer has preceded the issuance of memo charges, that does not affect the proceedings placing the petitioner under suspension. The report, dated 21/05/2007, made by the Vigilance Officer was before the Board, which had thus noticed the complaint of Smt.Susheela Menon, a teacher, attributing the petitioner with

abusive conduct. It was also a matter on record through the report of the Vigilance Officer that a crime has been registered as No.121/2007 on the basis of a complaint given by Smt.Susheela Menon. Without concluding finally on the merits of the charges and the defences that may be, it can safely be concluded that Ext.P4 order of suspension cannot be treated as groundless or without jurisdiction. Hence the challenge against Ext.P4 fails.

While dismissing this writ petition on the basis of the aforesaid, it is clarified that all remedies available to the petitioner in terms of Section 60 of the Act, by recourse to the Vice- Chancellor or the Appellate Tribunal, are left open. The management is further directed to ensure that any intended proceedings are not dragged on, but expedited, having regard to the time frame fixed by Section 60 of the Act.

THOTTATHIL B.RADHAKRISHNAN,
Judge

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